IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

RCRev..No. 340 of of 2005

RCA.168/2003 of ADDL.DISTRICT COURT, KOZHIKODE
RCP.93/2002 of ADDL.M.C.,KOZHIKODE-I
.....

PETITIONER/APPELLANT/RESPONDENT.

K.TRIPU, S/O.NATESAN, AGED 47 YEARS,
ILLATH KANDI HOUSE, KACHERY AMSOM, DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.N.JAMES KOSHY

RESPONDENTS: PETITIONERS.
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1. JANAKI BALAKRISHNAN, W/O.LATE
BALAKRISHNAN, AGED 59 YEARS, SREEKRISHNAPURAM,
ATHANIKKAL, PUTHIYANGADI AMSOM, EDAKKAD DESOM,
KOZHIKODE TALUK.

2. BIJULAL, S/O.LATE BALAKRISHNAN,
AGED 34 YEARS, OF DO. DO.

3. BINULAL, S/O.LATE BALAKRISHNAN,
AGED 32 YEARS, DO. DO.

BY ADV. SRI.E.NARAYANAN

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 23/02/2007, ALONG WITH RCR NO.341 OF 2005 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.2421/05 IN R.C.R.NO.340/05

DISMISSED.

Sd/-

(K.A.ABDUL GAFOOR)

JUDGE.

Sd/-

(ANTONY DOMINIC)

23.2.2007. **JUDGE.**

Vi/

K.A.ABDUL GAFOOR & ANTONY DOMINIC, JJ

RCR.NOS.340/05 & 341/05

Dated this the 23rd February, 2007

O R D E R

Antony Dominic, J

Tenants in the two rent control petitions filed by the respondents 1 to 3, the landlords, are in revision. The rent control petitions were filed urging ground under Section 11(3) of the Kerala Buildings (Lease & Rent Control) Act. It was contended that the tenanted premises were required for the second petitioner, the son of the first petitioner-landlady, to start a business of his own. The Rent Control court allowed the petitions finding bonafide need of the landlords and the said finding was confirmed by the Appellate Authority also. It is seen that, prior to the filing of these petitions Ext.A1 notice was issued by the landlady, the first petitioner, urging ground under Section 11(8). It was stated that her son whose need was urged in the petition, was already in occupation of

a portion of the building and that he wanted to start business of his own and for that purpose additional accommodation was necessary. However, as we have already noted, the ground urged in the Rent Control Petition was only under Section 11(3) of the Act. It is seen that, in order to get over this contradiction, during the course of evidence, the second petitioner came to the box as PW1 and tried to explain away the notice stating that it was a bonafide mistake, in as much as the real ground they wanted to urge was only under Section 11(3). However, the first petitioner on whose instruction the notice was issued, had not come to the box. For that reason, the explanation offered by the second petitioner was not acceptable. They also relied on the decision reported in **Devammadas V. Ramachandran Nair** (2005 (3) KLT 647), which has been rendered in a totally different factual background and hene is of no help to the landlords.

2. In view of the facts disclosed in the pleading and evidence adduced, it is really a case where the ground available under Section 11(8) of the Act alone is available to the landlords. Added to that is the judgment of this court in **Indian Saree House V. Radhalakshmy (2006(3) KLT 129)** where it is held that the ingredients of sub-section(3) and (8) are distinct and different and are mutually exclusive and cannot go together. On that reason the petition under Section 11(8) alone would have been maintainable and therefore the eviction ordered under Section 11(3) cannot be sustained. In the result the orders of the lower courts are set aside.

3. During the hearing the counsel for the landlords prayed that the matter may be remanded back to the rent control court to enable the petitioners to make necessary amendment to the pleadings and also with liberty to lead evidence in support of ground under Section 11(8) of the Act.

Having perused the pleadings and after hearing the counsel for the respondents and the petitioners, we are not inclined to allow the request for the reason that there are no pleadings in the petition nor is there any evidence in support of the ground under Section 11(8). Not only that, the tenants were also not put on notice of the ground under Section 11(8). In such circumstances, the remand will only prejudicial to the parties and we are not inclined to accept this plea either.

The Revision Petitions are allowed. No costs.

K.A. ABDUL GAFOOR, JUDGE

vi. ANTONY DOMINIC, JUDGE.

K.A.ABDUL GAFOOR, J.

CR.A.NO.112 of 1999

JUDGMENT

DATED .5.2006